

Document 1

Document 2

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

Lewis F. Powell, Jr. United States Courthouse Annex

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August 3, 2005

TO: Frances Hemsley Pratt, Esq.  
Michael Stefan Nachmanoff, Esq.  
Ronald Andrew Bassford, Esq.

Enclosed is a copy of the Court's decision in

Case Number(s): 05-4155

PATRICIA S. CONNOR  
CLERK

Enclosure(s)

UNPUBLISHED

UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT

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**No. 05-4155**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

CLYDE HENRY NEWBY, JR.,

Defendant - Appellant.

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Appeal from the United States District Court for the Western District of Virginia, at Danville. Jackson L. Kiser, Senior District Judge. (CR-04-39)

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Submitted: July 22, 2005

Decided: August 3, 2005

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Before WILKINSON, GREGORY, and DUNCAN, Circuit Judges.

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Remanded by unpublished per curiam opinion.

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Frances Hemsley Pratt, Michael Stefan Nachmanoff, OFFICE OF THE FEDERAL PUBLIC DEFENDER, Alexandria, Virginia, for Appellant. Ronald Andrew Bassford, OFFICE OF THE UNITED STATES ATTORNEY, Roanoke, Virginia, for Appellee.

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Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Clyde Henry Newby, Jr. seeks to appeal his conviction and sentence. In criminal cases, the defendant must file his notice of appeal within ten days of the entry of judgment. Fed. R. App. P. 4(b)(1)(A). With or without a motion, the district court may grant an extension of time to file of up to thirty days upon a showing of excusable neglect or good cause. Fed. R. App. P. 4(b)(4); United States v. Reyes, 759 F.2d 351, 353 (4th Cir. 1985).

The district court entered its judgment on December 15, 2004; the ten-day appeal period expired on December 30, 2004. Newby filed his notice of appeal after the ten-day period expired but within the thirty-day excusable neglect period. Because the notice of appeal was filed within the excusable neglect period, we remand the case to the district court for the court to determine whether Newby has shown excusable neglect or good cause warranting an extension of the ten-day appeal period. The record, as supplemented, will then be returned to this court for further consideration.

REMANDED